



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill 861 Amendment in the Nature of Substitute (Patron prior to substitute - Reeves)

LD#: 25106914

Date: 02/7/2025

Topic: Escape from jail or custody

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
Cannot be determined**
 - **Juvenile Detention Facilities:**
Cannot be determined**
- ** Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2024, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposal amends §§ 18.2-478 and 18.2-479 to expand the applicability of existing criminal penalties related to escapes from custody. The proposal amends § 18.2-478 to replace “police officer” with the potentially broader term “law enforcement officer” as defined in § 9.1-101. The proposal also specifies that the term “law enforcement officer” in § 18.2-479 is based on the definition in § 9.1-101. Finally, the proposal expands §§ 18.2-478 or 18.2-479 to include escapes from the custody of a fire marshal.

Currently, under § 18.2-478, it is a Class 6 felony for any person lawfully imprisoned in jail and not tried or sentenced on a criminal offense to escape from jail by force or violence, other than by setting fire. It is also a Class 6 felony for any person lawfully in the custody of any police officer on a charge of criminal offense to escape from such custody by force or violence. Under § 18.2-479, it is unlawful for any person to escape from jail or custody without force or violence; if a person is on a charge or conviction of a misdemeanor, the escape is a Class 1 misdemeanor, and if the person is on a charge or conviction of a felony, the escape is a Class 6 felony.¹

¹ Under current law, the felony offenses defined in §§ 18.2-478 and 18.2-479 are eligible for the enhanced sentence credits specified in § 53.1-202.3. The proposed legislation does not change the earned sentence credits available to offenders convicted of these felonies.

Analysis:

Existing databases do not provide sufficient detail to estimate the number of new convictions likely to result from enactment of the proposal. However, individuals convicted due to the proposal may be sentenced similarly to offenders currently convicted under these provisions.

According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2019 to FY2024, 40 offenders were convicted of a Class 6 felony under § 18.2-478 for escaping from custody by force or violence. In 11 of these cases, this was the primary, or most serious, offense in the sentencing event. Of these 11 sentencing events, four defendants (36.4%) did not receive an active term of incarceration, six defendants (54.5%) received a local-responsible (jail) sentence with a median sentence of 7.2 months, and one defendant (9.1%) received a state-responsible (prison) sentence of 1.5 years.

Circuit Court Case Management System (CMS) data for fiscal year FY2019 to FY2024 indicate that 109 offenders were convicted of a Class 6 felony under § 18.2-479(B) for escaping from custody without using force or violence while on a charge or conviction of a felony. In 48 of these cases, this was the primary, or most serious, offense in the sentencing event. Of the 48 events, eight defendants (16.7%) did not receive an active term of incarceration, 27 defendants (56.3%) received a jail sentence with a median sentence of 6.0 months, and 13 defendants (27.1%) received a state prison sentence with a median sentence of 2.0 years.

General District Court Case Management System (CMS) data for FY2019 to FY2024 indicate that 98 offenders were convicted of a Class 1 misdemeanor under § 18.2-479(A) for escaping from custody without using force or violence while on a charge or conviction of a misdemeanor. Of these 98 cases, 76 defendants (76.8%) received a jail sentence with a median sentence of 1.0 month. The remaining 22 defendants (22.4%) did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. By potentially expanding the applicability of the existing Class 6 felonies defined in § 18.2-478 and § 18.2-479(B), the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Available data do not provide sufficient detail to estimate the number of new felony convictions that may result from enactment of the proposal; therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. By expanding existing misdemeanor and felony offenses, the proposal may increase local-responsible (jail) bed space needs. Data are not sufficiently detailed to estimate how many additional misdemeanor convictions may result if the proposal is enacted. Thus, the extent of the impact on jail beds cannot be quantified.

Adult community corrections programs. Because the proposal could result in convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia's Sentencing Guidelines. Convictions under the existing § 18.2-478 and § 18.2-479 are not covered by the Sentencing Guidelines when this offense is the primary (or most serious) offense at sentencing. Such a conviction could augment the Guidelines recommendation (as an additional offense) if the most serious offense at sentencing is covered by the Guidelines. Escape by force or violence (§ 18.2-478) is defined as a violent offense in § 17.1-805(C) for the purposes of the Guidelines; escape without force or violence (§ 18.2-479) is not defined as violent in § 17.1-805(C). No adjustment to the Guidelines is necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2024, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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